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Office Supreme Court U. S.
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MAR 11 1901
JAMES H. McKENNEY,
Clerk.

No. 201.

Motion & assignment of errors.

Filed Mar. 11, 1901.

Supreme Court of the United States

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al., *Plaintiffs in Error,* *vs.* WEST CHICAGO PARK COMMISSIONERS, *Defendants in Error.*	Error to Supreme Court of the State of Illinois.

MOTION FOR LEAVE TO FILE ADDITIONAL ASSIGNMENTS OF ERROR.

Now, on this day, come the above named plaintiffs in error, by George W. Wilbur, their counsel, and move the court for leave to file additional assignments of error, which additional assignments ot error are numbered from 13 to 25, inclusive, and are made a part hereof.

Respectfully submitted.

GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

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Thomas F. Farrell et al. vs. West Chicago Park Commissioners.

No. 201.

ADDITIONAL ASSIGNMENTS OF ERROR.

13th. Said Supreme Court of Illinois erred in sustaining said judgment of confirmation against the property of each of the plaintiffs in error herein, for the reason that such judgment denied to each of said plaintiffs in error the rights and privileges guaranteed unto them, respectively, under and by virtue of the Fourteenth Amendment to the Constitution of the United States, and particularly to that portion of section 1 which is as follows:

"* * * No state shall make or enforce any law "which shall abridge the privileges or immunities of "citizens of the United States; nor shall any state deprive "any person of life, liberty or property without due "process of law, nor deny to any person within its "jurisdiction the equal protection of the laws."

14th. Said Supreme Court of Illinois erred in sustaining the order of said County Court of Cook County, which order denied the motion of said plaintiffs in error to dismiss said petition for confirmation, because the record herein, on its face, was insufficient, both in law and under the constitution of the State of Illinois, to support the same, for the reason that no sufficient and valid ordinance was the basis of the proceedings under which said alleged improvement was constructed,

although under such laws and said constitution a valid ordinance must be the basis thereof; that it appeared, upon the trial of said cause, that the original ordinance for said improvement was invalid, and the denial of said motion and the affirmance of said judgment by said Supreme Court, imposes a burden upon the property of the plaintiffs in error without due process of law, and it is a denial to each of them of the equal protection of the law.

15th. The Supreme Court of Illinois erred in holding that said County Court had jurisdiction to confirm said assessment as to the property of said plaintiffs in error, because such judgment of confirmation imposes a charge upon said property without jurisdiction therefor under the laws and constitution of the State of Illinois, for the reason that there was not a preceding valid ordinance as the basis of said proceedings, under which it is alleged said improvement was constructed, and the affirmance of said judgment by said Supreme Court of Illinois as to the property of said plaintiffs in error is, therefore, without due process of law, and it denies to them, respectively, the equal protection of the laws, in contravention of the Fourteenth Amendment to the Constitution of the United States.

16th. The Supreme Court of Illinois erred in sustaining said judgment of confirmation, and in holding that the property of said plaintiffs in error could be lawfully assessed for the cost of said alleged improvement by an ordinance and under proceedings which originated after the complete construction of such improvement, the original ordinance for the making thereof having been declared void. The established laws of the State of Illinois prohibit the confirmation

of a special assessment for work done under a prior invalid ordinance, and the affirmance of the judgment of said County Court imposes a charge upon the property of the plaintiffs in error herein contrary to the provision of the Fourteenth Amendment to the Constitution of the United States.

17th. Said Supreme Court also erred in sustaining said judgment, for the reason that the proceedings which resulted in the entry of such judgment of confirmation against the property of plaintiffs in error herein was instituted and carried to a conclusion and judgment entered under a certain alleged law which was passed subsequent to the making and completion of said alleged improvement; and also because the proceedings under which said alleged improvement was constructed, and which were the basis of the proceedings for confirmation herein, were declared invalid by the Supreme Court of Illinois; that by reason of the judgment of confirmation of said County Court, and the affirmance thereof by said Supreme Court, the plaintiffs in error herein will be deprived of their property without due process of law, and contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, unless said judgment of confirmation and the affirmance thereof are set aisde.

18th. Said Supreme Court of Illinois erred in sustaining said judgment of confirmation and in not setting the same aside, for the reason that said judgment is contrary to the Constitution of the United States and to article 1, section 10 (first), thereof, because the act of the legislature of said State of Illinois, approved June 24, 1895, and in force July 1, 1895, under which said proceedings were carried on in said County Court, were

passed and became a law of said state after said alleged improvement had been fully constructed under a previous invalid proceeding.

19th. Said Supreme Court of Illinois erred in affirming said judgment, because such confirmation is contrary to the laws of said State of Illinois in force, and by virtue of which said alleged improvement was constructed, which laws required that no improvement should be constructed under and by virtue of said act, "except upon the "petition of the owners of a majority of the land fronting "on the proposed improvement or sewer"; that neither said defendants in error nor the Town of West Chicago, the petitioner in the orginal preceedings under which said alleged improvement was constructed, nor any other person or corporation in their or its behalf, ever obtained such consenting petition; by means whereof said original proceedings and the proceedings herein are contrary to the constitution and to the established laws of the State of Illinois, and are also contrary to the Constitution of the United States, and to the Fourteenth Amendment thereof.

20th. Said Supreme Court of Illinois erred in confirming said judgment, and in not setting the same aside, because said assessment, as to the respective pieces of property of the plaintiffs in error, is levied and assessed against the same in the manner of a special tax, or upon a basis of frontage, without regard to the value of the various pieces of property, and in defiance of the Constitution of the State of Illinois, and Section 9 of Article IX thereof; that said decision and finding of said Supreme Court is also contrary to the Constitution of the United States, and of the Fourteenth Amendment thereof, in this, that the plaintiffs in error are deprived of their

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property and are denied the rights guaranteed to them in and by said amendment to the Constitution of the United States.

21st. Said Supreme Court erred in sustaining said judgment for the reason that, at the time of the construction of said alleged improvement, there was no ordinance, either valid or invalid, which set forth the nature, character, locality and description of said improvement, as is and was required by the laws of the State of Illinois, at the time of the construction of such improvement; that the improvement, as constructed, is other and different from that set forth in any ordinance, specifications or plans for the making thereof; that the construction of such improvement, without a valid ordinance, and without a sufficient estimate therefor, is contrary to the established laws of the state of Illinois, and the constitution thereof: by means whereof, the plaintiffs in error were deprived of the rights to which they are entitled under and by virtue of said Fourteenth Amendment to the Constitution of the United States.

22nd. The Supreme Court of Illinois erred in holding that a new ordinance, passed after the completion of said alleged improvement, was sufficient to justify the proceedings and judgment appealed from, because such judgment is contrary to the well-established laws of the State of Illinois; and said County Court thereby sought to charge the property of each of the plaintiffs in error with a public burden and without any statute therefor, except an act approved June 24, 1895, and in force July 1, 1895, which statute is the basis of said alleged assessment proceedings herein, although such statute was without legal force for such purpose; that thereby said Supreme Court and said County Court denied to each of the plaint-

iffs in error their right to the equal protection of the law, and said courts also denied to them such due precess of law as is guaranteed by the Fourteenth Amendment to the Constitution of the United States.

23rd. Said Supreme Court of Illinois erred in sustaining the judgment of said County Court, and in holding that the act of the legislature of the State of Illinois, and particularly Section 20 thereof, approved June 24, 1895, and in force July 1, 1895, was constitutional and valid, because said act is retroactive in effect and by it said defendants in error seek to charge the property of each of the plaintiffs in error with a public burden, and said defendant in errror and said courts thereby attempt to deprive each of the plaintiffs in error of the rights and privileges guaranteed to them, respectively, by said Fourteenth Amendment to the Constitution of the United States.

24th. Said Supreme Court of Illinois erred in sustaining said judgment of said County Court, because the subject-matter involved in the proceedings herein were fully determined in and by an order entered on March 12, 1897, in said County Court of Cook County, from which order no appeal was taken, in a certain proceedings known in said County Court as No. 10,655; that the entry of the judgment of confirmation under consideration herein was contrary to said order herein lastly referred to, because the subject-matter thereof had been fully adjudicated, and that by reason thereof the proceedings herein are unauthorized by and are contrary to the established laws of the State of Illinois; and in consequence of the entry of said judgment of confirmation, the said courts have denied to each of the plaintiffs in error herein the rights, privileges and immunities guaranteed under and

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by virtue of the Constitution of the United States, and of said Fourteenth Amendment thereto.

25th. Said Supreme Court of Illinois erred in affirming said judgment, for the reason that it is the settled law of the State of Illinois, and the established construction of its constitution, that the ordinance of March 28, 1893, which was the ordinance by virtue of which said improvement is alleged to have been constructed, was absolutely void at the time the present proceedings were instituted; and said courts of the State of Illinois, by reason of the conclusions adopted by each thereof, have departed from said settled law of the State of Illinois in the matter under consideration, and each of said courts has attempted to impose the present burden upon the property of each of said plaintiffs in error, contrary to said established law, all of which is in contravention of the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,

GEORGE W. WILBUR,
Counsel for Plaintiffs in Error.

No. 201.

OFFICE SUPREME COURT of U.S.
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MAY 23 1901

IN THE

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OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to Supreme Court of the State of Illinois.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING, AND FOR AN ORDER STAYING EXECUTION.

Now on this day come the above named plaintiffs in error, by Goerge W. Wilbur, their counsel, and move the court for leave to file a petition for a rehearing in said cause, which petition is presented herewith.

And the said plaintiffs in error, by their counsel, further move the court to enter an order herein staying the execution of the judgment entered in said matter by this Honorable Court, pending the disposition of the question as to said petition for rehearing. In support of the latter motion, said plaintiffs in error call the attention of the court to said petition for rehearing.

Respectfully submitted.

GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

Chicago, May 21, 1901.